UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 03-7423

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ROBERT T. WEIDOW,

Plaintiff - Appellant,

versus

JON OZMINT; ROBERT E. WARD; GEORGE T. HAGAN,

Defendants - Appellees.

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Appeal from the United States District Court for the District of South Carolina, at Rock Hill. David C. Norton, District Judge. (CA-03-2479-03-18BD)

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Submitted: January 30, 2004   Decided: February 13, 2004

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Before NIEMEYER and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Vacated and remanded by unpublished per curiam opinion.

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Robert T. Weidow, Appellant Pro Se.

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PER CURIAM:

Robert T. Weidow appeals the order of the district court adopting the recommendation of the magistrate judge and dismissing his suit filed under 42 U.S.C. § 1983 (2000). The magistrate judge found that Weidow had three or more actions or appeals dismissed as frivolous, malicious, or for failure to state a claim under 28 U.S.C. § 1915(g) (2000). However, one of these, Weidow v. Richland County Detention Center, No. 0:00-cv-2816 (D.S.C., May 25, 2001), was terminated by a grant of summary judgment to the defendants, and thus should not have been counted as a "strike" against Weidow. See 28 U.S.C. § 1915(g) (2000) (providing that a prisoner may not proceed without prepayment of fees if, on three or more prior occasions, he brought an action in federal court that was "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted"). Subtracting this case, Weidow has only two strikes against him. We therefore conclude that the district court erred in adopting the magistrate judge's recommendation.

We vacate the district court's order and remand for further proceedings. We express no opinion on the merits of Weidow's claims. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED